

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA
OMAHA DIVISION

DONOVAN MIDDLETON and HARVESTER)
NUTRITION, LLC,)

Plaintiffs,)

Case Number: 8:18-CV-115

v.)

COMPLETE NUTRITION FRANCHISING, LLC,)

AND)

COMPLETE NUTRITION FRANCHISE)
HOLDINGS, LLC,)

AND)

CR HOLDINGS, LLC,)

AND)

DOMINUS HEALTH INTERMEDIATE)
HOLDCO, LLC,)

AND)

DOMINUS HEALTH HOLDINGS, LLC,)

Defendants.)

DEFENDANTS' MOTION TO DISMISS

Defendants COMPLETE NUTRITION FRANCHISING, LLC (“Complete Nutrition”), COMPLETE NUTRITION FRANCHISE HOLDINGS, LLC (“CNFH”), CR HOLDINGS, LLC (“CR”), DOMINUS HEALTH INTERMEDIATE HOLDCO, LLC (“DHIH”), and DOMINUS HEALTH HOLDINGS, LLC (“DHH”) (together, the “Defendants”) by and through their attorneys, respectfully move this Court pursuant to Federal Rule of Civil Procedure 12(b)(6) to

dismiss Plaintiffs Donovan Middleton and Harvester Nutrition, LLC's ("Plaintiffs") Amended Complaint for failure to state a claim upon which relief can be granted.

1. On March 9, 2018 Plaintiffs joined with now severed plaintiffs M.G. Nutrition, LLC, Edgar Rojas, Christina Soares, Herman Hourie, Nutrition Castle, LLC, Bright Future Holdings, LLC, Vivify, Inc., Katherina Jerak, and Warrior Fitness & Nutrition, LLC in filing a complaint against Defendant, Complete Nutrition.

2. The plaintiffs, together, claimed that Complete Nutrition had misrepresented several details about owning and operating a Complete Nutrition franchise store, and brought causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing, negligent misrepresentation, fraudulent misrepresentation/fraudulent concealment, violation of the Nebraska Deceptive Trade Practices Act, violation of the Florida Franchise Act, and violation of the Indiana Deceptive Franchise Practices Act.

3. In response, Complete Nutrition filed a Motion to Sever the plaintiffs' claims, arguing that the plaintiffs had failed to meet the requirements for permissive joinder and that their claims should be split up.

4. On November 19, 2018, the Court issued an Order granting Complete Nutrition's Motion to Sever, and ordering the plaintiffs to re-plead their claims separately, as follows: (a) claims brought by Donovan Middleton and Harvester Nutrition, LLC; (b) claims brought by Edgar Rojas and Christina Soares; (c) claims brought by Herman Hourie and Nutrition Castle, LLC; (d) claims brought by Bright Future Holdings, LLC; (e) claims brought by Vivify, Inc.; (f) claims brought by Warrior Fitness & Nutrition, LLC; (g) claims brought by Jerak; and (h) claims brought by M.G Nutrition, LLC.

5. On December 17, 2018, Plaintiffs filed their Amended Complaint (the “Complaint”).

6. The Complaint names as Defendants Complete Nutrition, CNFH, CR, DHIH, and DHH, and alleges the following causes of action: breach of contract, breach of the implied covenant of good faith and fair dealing, negligent misrepresentation, fraudulent misrepresentation/fraudulent concealment, violation of the Nebraska Deceptive Trade Practices Act, and piercing the corporate veil.

7. For the reasons set forth in Defendants’ supporting memorandum, filed contemporaneously with this motion, Defendants move the Court to dismiss Plaintiffs’ claims. Respectfully submitted this 4th day of February, 2019.

WHEREFORE, for the foregoing reasons, Defendants Complete Nutrition Franchising, LLC, Complete Nutrition Franchise Holdings, LLC, CR Holdings, LLC, Dominus Health Intermediate Holdco, LLC, and Dominus Health Holdings, LLC respectfully pray for an order from this Court dismissing Plaintiffs Donovan Middleton and Harvester Nutrition, LLC’s Amended Complaint, with prejudice, and for any further relief this Court deems just.

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed on the CM/ECF system on February 4, 2019, and that notice was sent through that system to all counsel registered to receive notice, including the following:

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